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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA AMES, individually and as a
successor in interest to Henry Simmons,
deceased,

Plaintiff,

v.

COUNTY OF SAN BERNARDINO;

and DOES 1-10, inclusive.

Defendants.

Case No. 5:18-cv-01362-SJO-FFM

**STIPULATED PROTECTIVE
ORDER**

Judge: *Honorable S. James Otero*

Trial Date: June 30, 2020

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1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under applicable legal principles. The parties further acknowledge, as set forth in Section 12.3 below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

Defendants County of San Bernardino (“County”) and Defendant Deputies may be producing documents concerning confidential internal policies, which documents are generally unavailable to the public. The disclosure of this information may jeopardize the security of the County’s operations and jeopardize the safety of its peace officers. Defendants may also be producing documents that contain personal and confidential information regarding individuals which information is generally unavailable to the public, including peace officer personnel records. The disclosure of this information to the public may violate those individuals’ privacy rights. Defendants may also be producing video and audio related to the incident at issue in this case, as well as investigation reports, all of which is generally unavailable to the public, and the disclosure of which

1 could violate individuals' privacy rights and jeopardize the safety of officers.
2 Accordingly, to expedite the flow of information, to facilitate the prompt
3 resolution of disputes over confidentiality of discovery materials, to adequately
4 protect information the parties are entitled to keep confidential, to ensure that the
5 parties are permitted reasonable necessary uses of such material in preparation for
6 and in the conduct of trial, to address their handling at the end of the litigation,
7 and serve the ends of justice, a protective order for such information is justified in
8 this matter. It is the intent of the parties that information will not be designated as
9 confidential for tactical reasons and that nothing be so designated without a good
10 faith belief that it has been maintained in a confidential, non-public manner, and
11 there is good cause why it should not be part of the public records of this case.

12 **2. DEFINITIONS**

13 2.1 Action: *Cynthia Ames v. County of San Bernardino, et al.*, Central
14 District of California, Case No. 5:18-cv-01362-SJO-FFM.

15 2.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
18 how it is generated, stored, or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
20 the Good Cause Statement.

21 2.4 Counsel: Counsel of Record for each respective party, including any
outside counsel or in-house counsel of record, as well as their respective support
staff.

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1 2.5 Designating Party: a Party or Non-Party that designates information
2 or items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including
6 among other things, testimony, transcripts, and tangible things), that are produced
7 or generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its counsel to
10 serve as an expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this
12 Action. House Counsel does not include Outside Counsel of Record or any other
13 outside counsel.

14 2.9 Outside Counsel of Record: attorneys who are not employees of a
15 party to this Action, but are retained to represent or advise a party to this Action
16 and have appeared in this Action on behalf of that party or are affiliated with a law
17 firm which has appeared on behalf of that party, and including their support staff.

18 2.10 Non-Party: any natural person, partnership, corporation, association,
19 or other legal entity not named as a Party to this action.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and
their support staffs).

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1 2.12 Professional Vendors: persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits
3 or demonstrations, and organizing, storing, or retrieving data in any form or
medium) and their employees and subcontractors.

4 2.13 Protected Material: any Disclosure or Discovery Material that is
5 designated as “CONFIDENTIAL.”

6 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.15 Receiving Party: a Party that received Disclosure or Discovery
9 Material from a Producing Party.

10 3. SCOPE

11 The protections conferred by the Stipulation and Order cover not only
12 Protected Material (as defined above), but also (1) any information copied or
13 extracted from Protected Material; (2) all copies, excerpts, summaries, or
14 compilations of Protected Material; and (3) any testimony, conversations, or
presentations by Parties or their Counsel that might reveal Protected Material.

15 Any use of Protected Material at trial shall be governed by the orders of the
16 trial judge. This Order does not govern the use of Protected Material at trial.

17 4. DURATION

18 Even after final disposition of this litigation, the confidentiality obligations
19 imposed by this Order shall remain in effect until a Designating Party agrees
20 otherwise in writing or a court order otherwise directs. Final disposition shall be
21 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
with or without prejudice; and (2) final judgment herein after the completion and

1 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
2 including the time limits for filing any motions or applications for extension of
3 time pursuant to applicable law.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Exercise of Restraint and Care in Designating Material for**
6 **Protection.**

7 Each Party or Non-Party that designates information or items for protection
8 under this Order must take care to limit any such designation to specific material
9 that qualifies under the appropriate standards. The Designating Party must
10 designate for protection only those parts of material, documents, items, or oral or
11 written communications that qualify so that other portions of the material,
12 documents, items, or communications for which protection is not warranted are
13 not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited.
15 Designations that are shown to be clearly unjustified or that have been made of an
16 improper purpose (e.g., to unnecessarily encumber the case development process
17 or to impose unnecessary expenses and burdens on other parties) may expose the
18 Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that
20 it designated for protection do not qualify for protections, Designating Party must
21 promptly notify all other Parties that it is withdrawing the inapplicable
designation.

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1 5.2 Manner and Timing of Designations.

2 Except as otherwise provided in this Order (see, e.g., second paragraph of
3 section 5.2(a) below, or as otherwise stipulated or ordered, Disclosure or
4 Discovery Material that qualifies for protection under this Order must be clearly
5 so designated before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) For information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other
9 pretrial or trial proceedings), that the Producing Party affix at a
10 minimum, the legend “CONFIDENTIAL” (hereinafter
11 “CONFIDENTIAL legend”), to each page that contains protected
12 material. If only a portion or portions of the material on a page
13 qualifies for protections, the Producing Party also must clearly
14 identify the protected portion(s) (e.g., by making appropriate
15 markings in the margins).

16 A Party or Non-Party that makes original documents available for
17 inspection need not designate them for protection until after the
18 inspecting Party has indicated which documents it would like
19 copied and produced. During the inspection and before
20 designation, all of the material made available for inspection shall
21 be deemed “CONFIDENTIAL.” After the inspecting Party has
identified the documents it wants copied and produced, the
Producing Party must determine which documents, or portions
thereof, qualify for protection under this Order. Then, before
producing the specified documents, the Producing Party must
affix the “CONFIDENTIAL legend” to each page that contains

1 Protected Material. If only a portion or portions of the material on
2 a page qualifies for protection, the Producing party also must
3 clearly identify the protected portion(s) (e.g., by making
appropriate markings in the margins).

4 (b) For testimony given in depositions, that the Designating Party
5 identify the Disclosure or Discovery Material on the record,
6 before the close of the deposition, all protected testimony.

7 (c) For information produced in some form other than documentary
8 and for any other tangible items, that the Producing Party affix in
9 a prominent place on the exterior of the container or containers in
10 which the information is stored the "CONFIDENTIAL legend."
11 If only a portion or portions of the information warrants
protection, the Producing Party, to the extent practicable, shall
12 identify the protected portion(s).

13 5.3 Inadvertent Failures to Designate.

14 If timely corrected, an inadvertent failure to designate qualified information
15 or items does not, standing alone, waive the Designating Party's right to secure
16 protection under this Order for such material. Upon timely correction of a
17 designation, the Receiving Party must make reasonable efforts to assure that the
material is treated in accordance with the provisions of this Order.

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges.

3 Any Party or Non-Party may challenge a designation of confidentiality at
4 any time that is consistent with the Court's Scheduling Order.

5 6.2 Meet and Confer.

6 The Challenging Party shall initiate the dispute resolution process under
7 Local Rule 37.1, et seq.

8 6.3 The burden of persuasion in any such challenge proceeding shall be
9 on the Designating Party. Frivolous challenges, and those made for an improper
10 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
11 parties) may expose the Challenging Party to sanctions. Unless the Designating
12 Party has waived or withdrawn the confidentiality designation, all parties shall
13 continue to afford the material in question the level of protection to which it is
entitled under the Producing Party's designation until the Court rules on the
challenge.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles.

16 A Receiving Party may use Protected Material that are disclosed or
17 produced by another Party or by a Non-Party in connection with this Action only
18 for prosecuting, defending, or attempting to settle this Action. Such Protected
19 Material may be disclosed only to the categories of persons and under the
20 conditions described in this Order. When the Action has been terminated, a
21 Receiving Party must comply with provisions of section 13 below (FINAL
DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

5 Unless otherwise ordered by the court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose any information or item
7 designated “CONFIDENTIAL” only to the following:

8 (a) The Receiving Party’s Outside Counsel of Record in this Action,
9 as well as employees of said Outside Counsel of Record to whom
10 it is reasonably necessary to disclose the information for this
11 Action;

12 (b) The officers, directors, and employees (including House Counsel)
13 of the Receiving Party to whom disclosure is reasonably
14 necessary for this Action;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A);

19 (d) The court and its personnel;

20 (e) Court reporters and their staff;

21 (f) Professional jury or trial consultants, mock jurors, and
Professional Vendors to whom disclosure is reasonably necessary
for this Action and who have signed the “Acknowledgment and
Agreement to be Bound” (Exhibit A);

(g) The author or recipient of a documents containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) During their depositions, witnesses and attorneys for witnesses in the Action to whom disclosure is reasonably necessary provided that (1) The deposing party requests that the witness sign the “Acknowledgment and Agreement to be Bound” (Exhibit A); and (2) They will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

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1 (a) Promptly notify in writing the Designating Party. Such
2 notification shall include a copy of the subpoena or court order;

3 (b) Promptly notify in writing the party who caused the subpoena or
4 order to issue in the other litigation that some or all of the material
5 covered by the subpoena or order is subject to this Protective
6 Order. Such notification shall include a copy of this Stipulated
7 Protective Order; and

8 (c) Cooperate with respect to all reasonable procedures sought to be
9 pursued by the Designating Party whose Protected Material may
10 be affected.

11 If the Designating Party timely seeks a protective order, the Party served
12 with the subpoena or court order shall not produce any information designated in
13 this action as "CONFIDENTIAL" before a determination by the court from which
14 the subpoena or order issued, unless the Party has obtained the Designating
15 Party's permission. The Designating Party shall bear the burden and expense of
16 seeking protection in that court of its confidential material and nothing in these
17 provisions shall be construed as authorizing or encouraging a Receiving Party in
18 this Action to disobey a lawful directive from another court.

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1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as "CONFIDENTIAL." Such
5 information produced by Non-Parties in connection with this litigation is
6 protected by the remedies and relief provided by this Order. Nothing in these
7 provisions should be construed as prohibiting a Non-Party from seeking additional
8 protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party's confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party's
12 confidential information, then the Party shall:

- 13 (1) Promptly notify in writing the Requesting Party and the Non-
14 Party that some or all of the information requested is subject to
15 a confidentiality agreement with a Non-Party;
- 16 (2) Promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this Action, the relevant discovery
18 request(s), and a reasonably specific description of the
19 information requested; and
- 20 (3) Make the information requested available for inspection by the
21 Non-Party, if requested.

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1 (c) If the Non-Party fails to seek a protective order from this court within
2 14-days of receiving the notice and accompanying information, the Receiving
3 Party may produce the Non-Party's confidential information responsive to the
4 discovery request. If the Non-Party timely seeks a protective order, the Receiving
5 Party shall not produce any information in its possession or control that is subject
6 to the confidentiality agreement with the Non-Party before a determination by the
7 court. Absent a court order to the contrary, the Non-Party shall bear the burden
8 and expense of seeking protection in this court of its Protected Material.

7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a Receiving Party learns that, by inadvertence or otherwise, it has
9 disclosed Protected Material to any person or in any circumstance not authorized
10 under this Stipulated Protective Order, the Receiving party must immediately (a)
11 notify in writing the Designating party of the unauthorized disclosure(s), (b) use
12 its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
13 inform the person or persons to whom unauthorized disclosures were made of all
14 the terms of this Order, and (d) request such person or persons to execute the
15 "Acknowledgment and Agreement to be Bound" (Exhibit A).

15 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other
18 protection, the obligations of the Receiving Parties are those set forth in the
19 Federal Rule of Civil Procedure, Rule 26(b)(5)(B). This provision is not intended
20 to modify whatever procedure may be established in an e-discovery order that
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provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief.

Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections.

By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material.

A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

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1 13. FINAL DISPOSITION

2 After final disposition of this Action, as defined in paragraph 4, within 60-
3 days of a written request by the Designating Party, each Receiving Party must
4 return all Protected Material to the Producing Party or destroy such material. As
5 used in this subdivision, “all Protected Material” includes all copies, abstracts,
6 compilations, summaries, and any other format reproducing or capturing any of
7 the Protected Material. Whether the Protected Material is returned or destroyed,
8 the Receiving Party must submit a written certification to the Producing Party
9 (and, if not the same person or entity, to the Designating Party) by the 60-day
10 deadline that (1) identifies (by category, where appropriate) all the Protected
11 Material that was returned or destroyed and (2) affirms that the Receiving Party
12 has not retained any copies, abstracts, compilations, summaries, or any other
13 format reproducing or capturing any of the Protected Material. Notwithstanding
14 this provision, Counsel are entitled to retain an archival copy of all pleadings,
15 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
16 correspondence, deposition and trial exhibits, expert reports, attorney work
17 product, and consultant and expert work product, even if such materials contain
18 Protected Material. Any such archival copies that contain or constitute Protected
19 Material remain subject to this Protective Order as set forth in Section 4
20 (DURATION).

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1 14. VIOLATION

2 Any violation of this Order may be punishable by any and all appropriate
3 measures including, without limitation, contempt proceedings and/or monetary
4 sanctions.

5 IT IS SO ORDERD.

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7 DATED: February 11, 2020

/S/ Frederick F. Mumm
Frederick F. Mumm
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Central District
7 of California on _____ [date] in the case of *Grier v. County of San*
8 *Bernardino, et al.*, Central District of California Case No. 5:19-cv-00415-
9 JGB(SHK). I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to
11 comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner the information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District
13 Court for the Central District of California for the purpose of enforcing the terms
14 of this Stipulated Protective Order, even if such enforcement proceedings occur
15 after termination of this action. I hereby appoint _____ [print
16 or type full name] of _____ [print or type full address
and telephone number] as my California agent for service of process in connection
17 with this action or any proceedings related to the enforcement of this Stipulated
Protective Order.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____